
SECTION I

INTRODUCTION & BACKGROUND

INTRODUCTION

In April 2000, the Maricopa County Public Defender's Office (MCPD) contracted with Policy Studies Inc. (PSI) to conduct a management study of the Office. The broad objective of the study stated in the proposal solicitation was to develop a set of recommendations that, if implemented, would likely improve the Office's ability to provide quality legal representation at minimal cost. As initially framed, then, our task was to develop recommendations that would help the MCPD:

- Measure its performance in delivering defender services;
- Demonstrate the public value of those services; and
- Minimize the costs of the legal defense function.

We refined and further expanded these objectives in early discussions with the MCPD to include issues they saw as obstacles to their ability to deliver quality services. These issues fell into three categories:

- Criminal justice system issues. Realizing that the MCPD is part of a larger justice system, the views of others in the system are important. The MCPD had heard numerous comments about its performance, particularly from the court, and was interested in evaluating those concerns. It also wanted the study to examine how the Office's relations with external agencies could be improved, both in terms of the MCPD's services to those agencies (e.g., horizontal v. vertical representation) and the services those agencies provide to the MCPD (e.g., minute orders, case assignments).
- Resource issues. The MCPD has been sensitive to the County's resource issues and thus hoped this study would help it identify opportunities for using existing resources more effectively and efficiently.
- Organizational issues. Among others, the MCPD was interested in learning about: (1) how it could measure and demonstrate its effectiveness better, (2) alternative approaches to organizing and managing the Office, (3) best practices used in other

jurisdictions that the MCPD might want to adopt, (4) mechanisms for dealing with excessive caseloads, and (5) how it could work more collaboratively with its justice system partners.

BACKGROUND

Any study of a public defender's office (PDO) must first recognize the unique role of that office in the larger criminal justice system and then (1) how that role is shaped by the local legal culture and legal structures, (2) how it is integrated into the broader delivery of criminal justice services, and (3) how well it serves the community's needs and expectations. Many of the issues facing the MCPD are typical of criminal justice systems generally, while others are specific to Maricopa County.

MCPD as Part of the Larger Criminal Justice System

To understand the obstacles to achieving an efficient criminal justice system, we first need to consider the specific role of each agency in the system and then consider the agency in relation to the larger justice system in which it operates. This is particularly important in criminal justice because the system in which the agencies operate is adversarial and was designed to create conflict. In Maricopa County, this is illustrated by examining the roles of four key agencies:

- **County Attorney.** It is the county attorney's job to investigate cases in order to exercise its discretion regarding whether charges should be brought, against whom and to seek a conviction in those cases it decides to prosecute.
- **Public Defender.** The public defender represents the interests of clients, including gathering sufficient information about a case to advise the client and represent the client's interests effectively in court.
- **The Court.** The court provides a forum to resolve disputes and seeks a just and prompt outcome to the case, while helping ensure that the adversaries meet their professional obligations.
- **The County.** The County has a fiduciary responsibility to the public to allocate sufficient funds to justice system agencies and ensure that these funds are expended

wisely so that the system operates consistent with sound business practices and is cost-effective.

It is relatively easy from this brief description to see how tension might arise between and among these entities in the resolution of cases. This tension is necessary if the adversarial system of justice is to operate as it is designed and intended to operate. The absence of tension would raise questions among observers about the integrity of the system itself and whether that system is protecting societal values, such as the presumption of innocence, expeditious disposition of cases, and public safety.

The policies and practices of these entities also affect and are affected by the actions of other stakeholders in the system. Among others, these stakeholders include law enforcement, corrections, social service providers, the probation department, and the Clerk of Court's Office. In other words, criminal justice agencies have a highly interdependent and interactive set of relationships. In examining the operations of any single agency, therefore, we need to consider those operations in relation to the larger system in which the agency conducts its business.

Limited resources are an intervening variable that add tension to the system since all justice system agencies are competing for a limited pool of funds. On the one hand, this tension can be destructive if the agencies are at loggerheads about their roles and missions. On the other hand, this tension can be the bridge that helps agencies cooperate to make the most efficient use of the funds available. The precise role limited resources play in the larger justice system depends on a large number of factors. These factors may include, for example, whether and how well the agencies communicate, whether the agencies' leaders respect and trust one another, whether there is a consensus about and respect for the agencies' roles and missions, and whether they have an acceptable forum or mechanism for resolving conflicts.

The Mission of the MCPD

Several factors set the public defender apart from other agencies in the criminal justice system. These factors stem primarily from the public defender's role in the justice system, which is unusual and often not fully appreciated. Simply stated, the MCPD's primary mission is to provide the best legal representation to their clients in a professional and efficient manner. Thus, even though the Public Defender is a county

official (and in Maricopa County a county employee), his loyalty and the loyalty of his staff must be to their individual clients, regardless of whether that puts them at odds with other stakeholders in the justice system. This is not to say that the Public Defender should disregard or ignore the interests of other stakeholders, only that the client's interests should be paramount and not get lost amidst the other pressures of the job (e.g., obligations to the County as the funding source, to the courts and to the public at large).

This loyalty to individual clients creates tensions within public defender agencies as well, including impact on the (1) management of attorney staff, (2) office culture, (3) fragmentation of the defense function, and (4) perception of the defender office.

- Management. As public defenders, the attorneys take their mission seriously. Consistent with their ethical obligations, they operate independently and exercise their professional judgment about the best strategy in individual cases. This strategy may conflict with goals other stakeholders are trying to meet. It may also frustrate case management since each client's needs are special and the time required to meet those needs cannot be rigidly defined or circumscribed within a fixed set of rules and standards.
- PDO Culture. The interests of the public defender's clients run counter to the interests of virtually all other stakeholders. Combined with the adversarial nature of the system in which the PDO operates, it is not surprising to find that the PDO, like other criminal justice system entities, may exhibit a "bunker" mentality. That is, the PDO may see itself alone in the struggle to protect its clients against all of the other agencies and forces that are trying to convict them.
- Fragmentation of the Defense Function. There are three defender departments and one contract office that provide indigent representation services. The MCPD does not have authority—either management or budget authority—over the other agencies that provide defender services. While the agency heads communicate regularly, the absence of a single leader has obvious disadvantages when attempting to manage workloads and allocate resources as efficiently as possible.
- Perception. Because MCPD clients are generally poor and criminally accused and because the Public Defender is an appointed, rather than elected official, MCPD and

its leader usually rank low in the criminal justice system pecking order. Furthermore, if they are too avid in their mission, they risk being labeled as obstacles to the timely disposition of cases and may face the opprobrium of other key leaders in the system.

Within this climate, the Public Defender may respond negatively to criticism from other justice system leaders. This is especially true if the PD does not believe the justice system (1) has reasonable expectations and is making reasonable demands based on an appreciation for and understanding of the PD's professional role in the system, (2) respects the special role of the PD, (3) seriously listens to and incorporates the PD's opinions when making decisions about the system, (4) gives due consideration to the PD's capabilities and limitations in system planning, and (5) communicates meaningfully and collaboratively in effecting system change.

STUDY APPROACH

We adopted a cooperative approach to this work in the study's very early stages. Thus, the PSI team worked closely with one another and with the MCPD to (1) gather information for the study, (2) identify and gain access to individuals the PSI team needed to interview, (3) coordinate on-site meetings and schedule observations of key processes (e.g., court proceedings), and (4) arrange for briefings of the PSI team's initial improvement recommendations.

Interviews

The PSI team conducted interviews with more than 100 justice system professionals. (A list of those individuals is provided in Appendix A.) This included key leaders whom we believed or whom we were told would have some perspective on the operations of the MCPD. Externally, this included judges; court administrators; court clerks and other court staff; staff of the Maricopa County Attorney's Office (MCAO); County representatives (e.g., commissioners, county administrator, OMB); probation, law enforcement and corrections personnel; heads of other defender services agencies; and others. Internally, this included interviews with the MCPD top management, attorneys and all levels of supervisory and administrative staff. We would like to take this opportunity to express our deep appreciation for the cooperation and insight provided by this wide array of criminal justice personnel and Maricopa County. Their

support was an invaluable asset to the study team and contributed greatly to our final product.

We also conducted focus groups with management and line staff within the MCPD to gather information about workload and the approximate time required to complete selected defense activities.

Materials Review

The MCPD, and other justice system leaders, were very cooperative in providing the PSI team with an extensive set of background materials. Among others, this included past reports about the Maricopa County Criminal Justice System, the courts, and the MCPD.¹ It also included working papers, memoranda, letters, and other materials from external agencies. Finally, it included several notebooks of documentation from the MCPD about such issues as the MCPD's organizational structure; case management practices; workload and caseload standards; personnel policies and procedures; results from exit interviews with attorneys who left the agency; strategic plans; and employee satisfaction surveys.

Site Visits

The PSI project team conducted two site visits as part of the study, in April and June 2000. This gave the team an opportunity to observe operations within the MCPD, the justice courts and the Superior Court, and to visit the jail. Perhaps more important, however, was the opportunity the site visits gave project staff to meet with MCPD management. These meetings were critical to this report and to the recommendations for improvement of the MCPD.

¹ For example, see P. Burke, et al., *Preliminary Report: A Criminal Justice System Assessment of Maricopa County, Arizona*, prepared for Maricopa County under NIC Cooperative Agreement #97D01G1E3 (Center for Effective Public Policy; Silver Spring, MD: 1998) and R. Spangenberg, *Maricopa County Indigent Defense System, Final Report*, The Spangenberg Group, prepared for Maricopa County Department of Justice and Law Enforcement, October 1993. (Cited hereinafter as "Spangenberg.")

ORGANIZATION OF THE REPORT

This report is organized into seven sections. Section II summarizes the findings from the PSI team's examination and analysis of the MCPD's organization and structure and its internal operations. It reviews what we see as the Office's major internal strengths, and the challenges the Office faces and needs to address to improve its performance. The section devotes considerable attention to the issue of MCPD caseloads, since average caseloads have been excessive, and provides some recommendations for dealing with that issue.

Section III outlines and describes an alternative model for organizational structure for the MCPD that we believe would improve the Office's effectiveness and efficiency. It first discusses the critical issues that need to be addressed in designing a new structure. It then provides a point of departure for a new structure and discusses the rationale behind the structural changes we recommend. This recommendation for reorganization is not meant to be prescriptive. Rather, it is intended to promote critical thinking about how the MCPD's structure affects its ability to delivery high quality legal services.

Section IV examines issues surrounding workload and caseflow management in the MCPD. Cases are the currency of the MCPD and are the key productivity measure for the County Administrator and other justice system agencies. Thus, how the MCPD counts and weights cases has important implications for resources and relations with the rest of the justice system. We conducted focus groups with MCPD attorneys and staff to learn how the office currently counts and weights cases. Section IV discusses the results of that effort and provides recommendations for further action.

Section V presents a broad set of recommendations for improvement initiatives within the MCPD that were not raised in earlier sections. For example, it offers ideas for improving MCPD management functions and general operations, encourages the MCPD to review its salary and benefits package, makes recommendations for attorney and staff training and the uses of automation. In addition, the section pays particular attention to the main issues that were the impetus for this study; namely, MCPD autonomy, performance measurement, and demonstrating public value.

Section VI focuses on the MCPD and its relations with other stakeholders in the criminal justice system. In particular, the section examines the interactions among the

court, the County Attorney's office, and the MCPD and proposes recommendations for joint action that we believe will improve operations in the justice system as a whole.

We take a systemic view in this section by considering the interactions among the agencies in the system and proposing methods for improving communication and cooperation between and among them.

The final section, Section VII, summarizes the study's purpose and key findings. Then it offers a composite list of the PSI team's improvement recommendations.